

Customer No. 22,852
Attorney Docket No. 03715.0102

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Elisabeth TOURNIER-LASERVE et al.) Group Art Unit: 1637
Patent No. 7,364,844 B1) Examiner: Teresa E.
Issued April 29, 2008) STRZELECKA
For: USE OF THE KRIT1 GENE IN THE) Confirmation No. 4231
FIELD OF ANGIOGENESIS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (PTO) issued the above-referenced U.S. Patent No. 7,364,844 (the '844 patent) on April 29, 2008, with a patent term adjustment (PTA) of 1113 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the PTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time periods of PTA

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accrue due to PTO examination delay and those time periods do not overlap.

The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 24, 2008

By:

Kenneth J. Meyers
Reg. No. 25,146

Enclosures

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Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The Office issued the subject U.S. Patent No. 7,364,844 (the '844 patent) with a patent term adjustment of 1113 days.

The Application was filed on May 7, 2002. The first Office Action on the merits was dated July 27, 2004, creating a U.S. Patent and Trademark Office (PTO) delay of 386 days. A response to the July 27, 2004, Office Action was filed December 27, 2004, creating an Applicant delay of 61 days. A second Office Action on the merits was dated July 20, 2006. A response to the July 20, 2006, Office Action was filed on January 24, 2007, creating an Applicant delay of 92 days. The patent application was allowed on July 2, 2007, and the issue fee was paid on October 2, 2007. The '844 patent issued on April 29, 2008. The three year pendency date for determination of patent term adjustment is May 7, 2005, thereby creating a PTO delay of 1088 days.

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In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 1586 days, which is the sum of 1113 days of patent term adjustment due to exceeding three year pendency and 473 days due to PTO delay in prosecution.

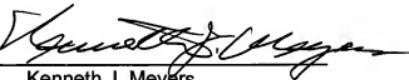
If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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